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October 15, 2013

**Subject: Testimony to the Senate Water and Natural Resources Committee  
regarding Water Trust Board Policies**

Mr. Chairman and Members of the Committee:

Having provided civil engineering services for many of water system improvement projects throughout New Mexico since 1976, funded through a variety of federal and state sources including the Water Trust Board, I would request that the New Mexico State Legislature make the following changes to the enabling legislation of the Water Trust Board which operates under the New Mexico Finance Authority:

**1. Require that the criteria for applicant eligibility for financial assistance be only compliance with statutes and regulations applicable to the entity applying.**

The Water Trust Board has enacted application threshold requirements that far exceed the statutes and regulations that pertain to municipalities, water and sanitation districts and mutual domestic water consumer associations. A checklist summary of the current requirements (3 pages) just to submit a funding application is attached.

These criteria, many in excess of current statutory or regulatory requirements, have not been subject to legislative oversight - only written comments which were filtered by staff, with no public testimony prior to adoption.

Understanding that the desire and intent is to encourage good public water system management, my professional experience is that many small water systems do exercise good management without some or even most of these burdensome requirements for funding - and have done so for years! They must follow the law. State statutes already determine their operating requirements, statutes that are introduced and debated in a full public forum and adopted or rejected by the legislature and the Governor, followed by administrative regulations which are also subject to public comment - not regulations unilaterally imposed by any one funding entity.

There should be uniformity of water system operating requirements for all state funding programs, and that uniformity comes through statutory requirements and regulations that apply to all water systems, not just those seeing funding assistance.

The result of these additional application requirements, promulgated for several years over the life of the Water Trust Board, has been to continue the trend toward the funding

of larger municipal systems that can afford the cost of these additional administrative requirements, to the detriment of smaller community systems that cannot.

**2. Eliminate the outdated applicant match requirement and set the maximum loan requirement at 20%.**

Early in the life of the Water Trust Board a match requirement was established to ensure that there was some local financial commitment to the proposed water project. A substantial loan requirement of up to 40% was later added, so the need for a match now no longer exists. Many recipients of Water Trust Board funding have to fund up to 60% of their projects under current policies.

These match and loan requirements are too high for small community water systems. The federally-funded CDBG program has a match requirement of only 5% and no loan requirement at all. Water Trust Board loan repayments from the communities are now being used to pay for NMFA staff.

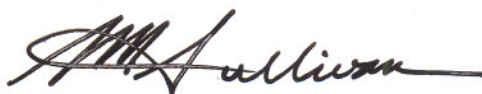
**3. Require that Water Trust Board meetings and committee meetings be open to the public.**

The Water Trust Board needs better transparency in its review and funding process. A great deal of responsibility is placed on its Policy Committee to discuss and make recommendations to the Board on a variety of funding issues, yet the committee meetings are always closed to the public. Opening these meetings to potential applicants will help them better understand the application and funding process. Governor Martinez promised New Mexicans greater government transparency, and this would be a very useful place for it.

I believe these three suggestions for legislative enhancements to the Water Trust Board statutes will move the Board toward a program that is more equally balanced between large and small communities, both of which deserve safe and clean water supplies.

Thank you for your consideration of these recommendations.

Very truly yours,



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Attachment: Water Trust Board Application Checklist – July 2013

## Water Trust Board Application Checklist

The following item is required for the Initial Application for the Water Trust Board:

- Signed **Certification** form by highest elected official and finance officer/director.

The following items must be certified, for eligibility for the Fundable Application, with the appropriate agency as specified by the deadlines below:

- OSE Water Rights Verification (water rights form as included in application – contact: John Romero, Water Rights Division Director, OSE, (505) 827-4187, [john.romero2@state.nm.us](mailto:john.romero2@state.nm.us); or Yvonne Vigil, Administrative Assistant, OSE, (505) 827-6173, [Yvonne.vigil2@state.nm.us](mailto:Yvonne.vigil2@state.nm.us) by January 1, 2014;
- Verification that a copy of the Water Conservation Plan submitted to OSE in accordance with Chapter 72, Article 14 NMSA 1978, and any other Conservation Plans as required by law – contact John Romero, Water Rights Division Director, OSE, (505) 827-4187, [john.romero2@state.nm.us](mailto:john.romero2@state.nm.us); or Yvonne Vigil, Administrative Assistant, OSE, (505) 827-6173, [Yvonne.vigil2@state.nm.us](mailto:Yvonne.vigil2@state.nm.us) by January 1, 2014;
- Compliance with the Safe Drinking Water Act – contact: Danielle Shuryn, NMED – Drinking Water Bureau Office (505) 476-8637, [danielle.shuryn@state.nm.us](mailto:danielle.shuryn@state.nm.us), by December 2, 2013;
- Compliance documents with the Sanitary Projects Act– contact: Danielle Shuryn, NMED – Drinking Water Bureau Office (505) 476-8637, [danielle.shuryn@state.nm.us](mailto:danielle.shuryn@state.nm.us), by December 2, 2013; and
- Certified Operator compliance as appropriate for the system– contact: Danielle Shuryn, NMED – Drinking Water Bureau Office (505) 476-8637, [danielle.shuryn@state.nm.us](mailto:danielle.shuryn@state.nm.us), by December 2, 2013.

The following items are required and must be submitted with the Fundable Application for the Water Trust Board:

- **Resolution** of the governing body authorizing the submission of an application to the Water Trust Board and compliance with WTB policy;
- **Articles of Incorporation** and By-laws (if applicable);
- Compliance with the **Open Meetings Act** Resolution;
- An **Approved Operating Budget**; and,
- **Financial Statements** documenting compliance with the State Audit Rule (three year minimum, unless the applicant is newly created and three years of financial statement are unavailable.)
- **Joint Powers Agreement** or Memorandum of Understanding (if applicable);
- List of all **debt**, including debt holder, pledged revenues, payment schedule and any prohibitions or test for additional debt;
- Documentation that each **non-WTB project funding** source has been approved;
- Detailed **project phase schedule**;
- Explanation of **land ownership arrangements** (if applicable);
- Documentation showing status of **landowner/agency agreements** (if applicable);

- List all required **permits and licenses** necessary to complete this project (i.e., federal and state permits or compliance with National Environmental Policy Act requirements).  
Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses;
- Is there **litigation pending** which would have a bearing on this project or applicant? If yes, provide a complete summary of all circumstances relating to such litigation;
- **Right of Way Acquisition** Documentation;
- Copy of the water system's long term water plan (a minimum of 10 years); and,
- A Resolution of Commitment for the Operations and Maintenance of the proposed project.

**For the 2014/2015 application cycle, the following items will be required:**

- Signed Certification form by highest elected official and finance officer/director;
- Resolution of the governing body authorizing the submission of an application to the Water Trust Board and compliance with WTB policy;
- Articles of Incorporation and By-laws (if applicable);
- Compliance with the Open Meetings Act Resolution;
- An Approved Operating Budget;
- Financial Statements documenting compliance with the State Audit Rule (three year minimum, unless the applicant is newly created and three years of financial statement are unavailable);
- Joint Powers Agreement or Memorandum of Understanding (if applicable);
- List of all debt, including debt holder, pledged revenues, payment schedule and any prohibitions or test for additional debt;
- Documentation that each non-WTB project funding source has been approved;
- Detailed project phase schedule;
- Asset Management Plan;
- Preliminary Engineering Report, Engineering Study or Feasibility Study (unless funding is sought for this purpose);
- Metering of customers, water system rates must be based on metered use;
- Written job descriptions for all staff and contractors;
- Written operating procedures;
- Documentation of an implemented cross-connection control program;
- An approved source-water protection plan;
- Emergency response plan;
- Documentation of a water accounting system and a water audit plan;
- A five year financial plan which includes internal controls;
- Explanation of land ownership arrangements (if applicable);
- Documentation showing status of landowner/agency agreements (if applicable);
- List all required permits and licenses necessary to complete this project (i.e., federal and state permits or compliance with National Environmental Policy Act requirements).  
Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses;

- Is there litigation pending which would have a bearing on this project or applicant? If yes, provide a complete summary of all circumstances relating to such litigation;
- Right of Way Acquisition Documentation;
- Copy of the water system's long term water plan (a minimum of 10 years); and,
- A Resolution of Commitment for the Operations and Maintenance of the proposed project.
- OSE Water Rights Verification;
- Certification of the Water Conservation Plan submitted to OSE in accordance with Chapter 72, Article 14 NMSA 1978, and any other Conservation Plans as required by law;
- Compliance with the Safe Drinking Water Act;
- Compliance documents with the Sanitary Projects Act; and
- Certified Operator Compliance as appropriate for the system.